

201215016



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JAN 18 2012

Uniform Issue List: 408.03-00

T: EP. RA. T3

Legend:

Taxpayer A:

IRA X:

Account Number Y:

Account Number Z:

Routing Number 2:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Month 2:

Month 3:

Amount M:

Page 2

Amount N:

Amount P:

Amount Q:

Bank M:

Bank W:

Dear

This is in response to letters dated May 24, 2011, and July 27, 2011, in which your request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code")

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained an Individual Retirement Account ("IRA"), IRA X at Bank W of Amount M. Taxpayer A, age asserts that on Date 2, Amount M was electronically transferred to Bank M. Taxpayer A intended Amount M to be placed in an IRA at Bank M but instead Amount M was placed in a non-IRA Account Number Y at Bank M. Taxpayer A further represents that Amount M has not been used for any other purpose.

Taxpayer A represents that on Date 1, Taxpayer A received written notification from Bank W that IRA X would mature on Date 2. In an effort to receive a better interest rate on the funds, Taxpayer A contacted several banking institutions to compare rates on IRAs and selected Bank M, as the successor trustee/custodian for IRA X. Taxpayer A was given Account Number Y and Routing Number 2 from a Bank M sales representative. Taxpayer A then contacted Bank W and instructed them to conduct a transfer of Amount M from IRA X to Bank M to open a new IRA at Bank M.

On Date 2, Amount M was withdrawn from IRA X and on Date 3 these funds were electronically transferred to Account Number Y at Bank M. Taxpayer A was unaware at the time that Account Number Y at Bank M was not an IRA as he had intended it to be.

On Date 4, Amount P was transferred by Bank M from Account Number Y to a separate non-IRA, Account Number Z. Amount N remained in Account Number Y. Both Account Number Y and Account Number Z were renewed with new maturity dates of Date 5 and Date 7, respectively.

In Month 2 of 2011, Taxpayer A received a 1099-INT statement from Bank M indicating that Amount Q of interest income had accrued on Account Number Y in 2010 but Taxpayer A had not received a distribution from the account. Taxpayer A notified his tax accountant but no further action was taken.

In Month 3 of 2011, while Taxpayer A was compiling his 2010 tax documents in preparation for a meeting with his CPA, he contacted Bank M about the interest shown on the Form 1099-INT and was informed by Bank M that Account Number Y was not an IRA.

Taxpayer A has submitted a copy of a letter dated Date 6, from Bank W in which Bank W confirms that Amount M was transferred from a traditional IRA, wired to Bank M, and was intended to be invested in an IRA at Bank M. In addition, the wire transfer request specifically states that the transaction is an IRA transfer.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount M.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not

apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by a representative of Bank M in not following the instructions of Taxpayer A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days from the date of the issuance of this letter ruling to make a rollover contribution of Amount M to a rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount M will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact XXXXXXXX XXXXXX
by phone at XXXXXXXX or fax at XXXXXXXX .

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Laura B. Warshawsky", written in dark ink.

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose